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FILED

07 NOV 13 AM 11:59

CLERK, U.S. DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

BY:

DEPUTY

Attorneys for Plaintiff
 United States of America

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
 Plaintiff,

Magistrate

07 MS 2651

MOTION TO EXCUSE FILING OF
 SEARCH WARRANT AND ORDER THEREON

v.

IN THE MATTER OF THE
 SEARCH OF:

Express Mail Parcel
 #EB066274742US

Express Mail Parcel
 #EB677124484US

The plaintiff, UNITED STATES OF AMERICA, by and through its
 counsel, Karen P. Hewitt, United States Attorney, and Linda A.
 Frakes, Assistant United States Attorney, hereby moves this Court
 to excuse the filing of the search warrants, issued under Rule 41
 of the Federal Rules of Criminal Procedure. The motion is based
 on the attached declaration of Ana Flores, United States Postal
 Inspector, the affiant for the search warrant for the above-
 referenced parcels.

I

POINTS AND AUTHORITIES

Under Rule 41(d) of the Federal Rules of Criminal Procedure, a magistrate judge must issue a warrant if there exists probable cause to search for and seize property. Rule 41(e) states that the warrant must identify the property to be searched, the property to be seized and designate the magistrate judge to whom it must be returned. In addition, the warrant must command the law enforcement officer to execute the warrant within a specified time, execute the warrant in daytime, unless permission for nighttime is granted, and to return the warrant to the magistrate judge designated in the warrant. Under Rule 41(i), the magistrate judge to whom the warrant is returned must attach to the warrant a copy of the return, of the inventory, and of all other related papers and must deliver them to the clerk in the district where the property was seized.

In this case, the original search warrant was signed on November 2, 2007 and executed on November 2, 2007. The original search warrant was not filed with the Clerk's Office on that date. Based on the attached affidavit of U.S. Postal Inspector Flores, a copy of the original search warrant was not made and the search warrant is no longer available to be filed. This motion is to excuse the filing of the original search warrant but file the Return to the Search Warrant with the Clerk's Office.

II

CONCLUSION

The Government hereby requests that the motion to excuse the filing of the Rule 41 search warrants be excused and the Return of Search Warrant be filed.

Dated: November 13, 2007

Respectfully submitted,

KAREN P. HEWITT
UNITED STATES ATTORNEY

Linda A. Frakes

Linda A. Frakes
Assistant U.S. Attorney

ORDER

IT IS HEREBY ORDERED that the motion to excuse the filing of the search warrants, issued on November 2, 2007, is granted.

11/13/07
DATED

Louisa S. Porter
HONORABLE LOUISA S. PORTER
United States Magistrate Judge

1 I, Ana Flores, hereby declare, affirm and depose the following:

- 2 1. On November 2, 2007, I met with Assistant U.S. Attorney Eugene Litvinoff who reviewed two
3 separate affidavits in support of an application for a search warrant for the following two Express
4 Mail Parcels: Express Mail parcel # EB066274742US was addressed to Rochell Bockolz, 452
5 Fairwood Ave. #A, Columbus, OH 43205; the parcel listed the return information of Anthony
6 Bockolz, 5114 Mission Ctr. Rd., Mission Valley, CA 92108 and Express Mail parcel #
7 EB677124484US was addressed to Heather W., 5000 Tibbit Rd., Burke, VA 22015; the parcel
8 listed the return information of Derek Belamy, 201 S. Midway Dr., Escondido, CA 92127. The
9 basis of the Search Warrant request was based, in part, on a positive dog alert on each parcel
10 for the presence of the odor of controlled substances.
- 11 2. On November 2, 2007, the Honorable Louisa S. Porter issued the two requested search
12 warrants; however, due to the late hour, I was not able to duplicate and file either search warrant
13 with the clerk's office.
- 14 3. On November 2, 2007, at approximately 4:50 p.m., in the presence of Postal Inspector Sean
15 Mackin, I executed both search warrants at the San Diego Postal Inspectors domicile located at
16 815 E Street, San Diego, CA which is the location of my office.
- 17 4. Within Express Mail parcel # EB066274742US, I located approximately 2,324.5 grams of a
18 green leafy substance which field tested positive for marijuana. The contraband was sealed and
19 entered into evidence under Inspection Service guidelines.
- 20 5. Within Express Mail parcel # EB677124484US, I located approximately 35 grams of a green
21 leafy substance which field tested positive for marijuana. The contraband was sealed and
22 entered into evidence under Inspection Service guidelines.
- 23 6. On Friday, November 2, 2007, I placed two folders, which contained the above mentioned
24 Search Warrants, accompanying affidavits and a floppy disk which contained an electronic copy
25 on my desk for further processing.
- 26 7. On Monday, November 5, 2007, I noticed the folders containing the Search Warrant documents
27 were not on my desk. I conducted a thorough search of all locations within my office and
28

1 vehicles but could not locate the search warrants. I believe the documents could have been
2 inadvertently picked up and filed and not yet located or they could have inadvertently been
3 discarded within the packaging materials at the time the parcels were searched.

4 8. Attached to this motion and order, are the returns for the two Search Warrants issued and
5 executed on November 2, 2007.

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7 I declare under penalty of perjury, the foregoing is true and correct.

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9 Executed on this 13th day of November 2007.

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12 Ana Flores
13 Postal Inspector
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United States District Court

Southern DISTRICT OF California

In the Matter of the Search of

(Name, address or brief description of person or property to be searched)

Express Mail parcel # EB677124484US addressed to Heather W., 5000 Tibbit Rd., Burke, VA 22015. The parcel listed the return information of Derek Belamy, 201 S. Midway Dr., Escondido, CA 92127

SEARCH WARRANT

CASE NUMBER: '07 MJ2651

TO: Ana L. Flores, Postal Inspector and any Authorized Officer of the United States

Affidavit(s) having been made before me by Ana L. Flores who has reason to
Affiant

believe that ☐ on the person of or ☒ on the premises known as (name, description and/or location)

Express Mail parcel # EB677124484US addressed to Heather W., 5000 Tibbit Rd., Burke, VA 22015. The parcel listed the return information of Derek Belamy, 201 S. Midway Dr., Escondido, CA 92127 92108 which is in the custody of the U.S. Postal Inspection Service.

in the Southern District of California there is now
concealed a certain person or property, namely (describe the person or property)

Controlled substances, materials, and documents reflecting the distribution of controlled substances through the United States Mail, including money paid for controlled substances, in violation of Title 21, United States Code, Sections 841(a)(1), 843(b) and 846

I am satisfied that affidavit(s) and any recorded testimony establish probable cause to believe that the person or property so described is now concealed on the person or premises above-described and establish grounds for the issuance of this warrant.

YOU ARE HEREBY COMMANDED to search on or before

Date

(not to exceed 10 days) the person or place named above for the person or property specified, serving this warrant and making the search (in the daytime - 6:00 A.M. to 10:00 P.M.) (at any time in the day or night as I find reasonable cause has been established) and if the person or property be found there to seize same, leaving a copy of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant to

U. S. Judge or Magistrate

as required by law.

at San Diego, CA

Date and Time Issued

City and State

Name and Title of Judicial Officer

U.S. Magistrate Judge

Signature of Judicial Officer

RETURN

DATE WARRANT
RECEIVED

11-2-07

DATE AND TIME WARRANT EXECUTED

11-2-07

5:05 pm

COPY OF WARRANT AND RECEIPT FOR ITEMS LEFT WITH

USPS

INVENTORY MADE IN THE PRESENCE OF

Postal Inspectors A. Flores and S. Machin

INVENTORY OF PERSON OR PROPERTY TAKEN PURSUANT TO THE WARRANT

Express Parcel # EB677124484US

Exterior envelope was a Ready Post envelope which contained a Tyvek priority mailing envelope which contained a t-shirt wrapped around a plastic baggie which contained a green leafy substance which field tested positive for marijuana which weighed approximately 35 grams.

~~deletes 11/2/07~~

CERTIFICATION

I swear that this inventory is a true and detailed account of the person or property taken by the warrant.

Ana Flores

Subscribed, sworn to, and returned before me this date.

Ronald Foster

U.S. Judge

11/13/07

Date